UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/044,098	01/11/2002	Ronald E. Decker	4803-1	7541

22442 7590 03/09/2006

SHERIDAN ROSS PC
1560 BROADWAY
SUITE 1200
DENVER, CO 80202

EXAMINER	
TRAN, HANH VAN	

ART UNIT	PAPER NUMBER
3637	

DATE MAILED: 03/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/044,098	DECKER, RONALD E.	
	Examiner	Art Unit	
	Hanh V. Tran	3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *15 June 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-13,15-30 and 33-41* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-13, 15-30, 33-41* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. This is the Final Office Action from the examiner in charge of this application in response to applicant's amendment dated 6/15/2005.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 1-7, 9-12, 19-23, 25-29, 34-35, 37-38, and 40-41 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Paradigm Industries, Inc., Photographs of a stand first offered for sale approximately September of 2001 (Paradigm Stand) in view of German 2,601,223 to Peddinghaus.

Paradigm Stand discloses a stand comprising a base, a support member interconnected to the base, a support sleeve having at least a top surface and in slidable telescopic cooperation with the support member, a lift platform associated with the top surface of the support sleeve, a coupling mechanism slidably interconnected to

the support sleeve, an actuating lever interconnected to the coupling mechanism, a clevis interconnected to the base, at least one link member pivotally interconnected to the clevis and the actuating lever, where the stand can be selectively positioned between a first position of rest and a second position of use. The different being that Paradigm Stand does not disclose a self-lubricating member, said self-lubricating member be either a sleeve or at least one strip, and a seal member.

Peddinghaus teaches the idea of providing a plurality of telescoping members with a self-lubricating member, which can be either a sleeve or a strip in order to facilitate relative adjustment of the telescoping members. Therefore, it would have been obvious to modify the structure of Paradigm Stand by providing a self-lubricating member in the form of a sleeve or a strip in order to facilitate relative adjustment of the telescoping members, as taught by Peddinghaus, since both teach alternate conventional telescoping members structures, thereby providing structure as claimed. In regard to a seal member, it would have been obvious and well within the level of one skill in the art to provide the stand of Paradigm Stand with a seal member in order to prevent dirt from entering the telescoping members.

5. Claims 8, 24, 36, and 39 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Paradigm Stand, as modified, as applied to claims 1, 19, 34, and 38 above, and further in view of USP 5,769,396 to Tischendorf.

Paradigm Stand, as modified, discloses all the elements as discussed above except for the clevis is removable.

Tischendorf discloses a stand comprising a base, a lift platform, an actuating lever, and a removable clevis; wherein the removable clevis allows a more compact stand in the storage configuration. Therefore, it would have been obvious to modify the structure of Paradigm Stand, as modified, by having the clevis being removable in order to provide a more compact stand in the storage configuration, as taught by Tischendorf, since both teach alternate conventional stand structure, used for the same intended purpose, thereby providing structure as claimed.

6. Claims 13, 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Paradigm Stand in view of USP 5,769,396 to Tischendorf and German 2,601,223 to Peddinghaus.

Paradigm Stand, as stated in paragraph #4 above, discloses all the elements recited in the above listed claims 13, 16, and 18, including the claimed limitation of the actuating lever operatively communicating with the support sleeve to allow the lift platform to be adjusted to a plurality of heights, i.e., the first height position of rest and the second height position of use. The differences being that it does not disclose the clevis is removable and a self-lubricating member, said self-lubricating member be either a sleeve or at least one strip.

Tischendorf discloses a stand comprising a base, a lift platform, an actuating lever, and a removable clevis; wherein the removable clevis allows a more compact stand in the storage configuration. Therefore, it would have been obvious to modify the structure of Paradigm Stand by having the clevis being removable in order to provide a more compact stand in the storage configuration, as taught by Tischendorf, since both

teach alternate conventional stand structure, used for the same intended purpose, thereby providing structure as claimed.

Peddinghaus teaches the idea of providing a plurality of telescoping members with a self-lubricating member, which can be either a sleeve or a strip in order to facilitate relative adjustment of the telescoping members. Therefore, it would have been obvious to modify the structure of Paradigm Stand, as modified, by providing a self-lubricating member in the form of a sleeve or a strip in order to facilitate relative adjustment of the telescoping members, as taught by Peddinghaus, since both teach alternate conventional telescoping members structures, thereby providing structure as claimed.

7. Claims 30 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Paradigm Stand in view of Moose Aluminum Lift Stand, year 2002 model and German 2,601,223 to Peddinghaus.

Paradigm Stand, as stated in paragraph #4 above, discloses all the elements recited in claim 30 including the claimed limitation of the support sleeve and the lift platform can be adjusted to a plurality of heights, i.e., the first height position of rest and the second height position of use. The differences being that Paradigm Stand does not disclose the coupling mechanism can be selectively interconnected along the support sleeve and a self-lubricating member, said self-lubricating member be either a sleeve or at least one strip.

However, Moose Aluminum Lift Stand, year 2002 model teaches the idea of providing a lift stand, which can provide the support sleeve and the lift platform with two

height choices for low dual sport bikes and high MX bikes. Therefore, it would have been obvious to modify the structure of Paradigm Stand by providing the support sleeve and the lift platform with two height choices for various bikes' heights, as taught by Moose Aluminum Lift Stand, year 2002 model, since both teach alternate conventional left stand structure, used for the same intended purpose, thereby providing structure as claimed. Further, in regard to the coupling mechanism can be selectively interconnected along the support sleeve (being separable from the support sleeve and adjustable along the support sleeve), instead of being fixed at one position as disclosed in Paradigm Stand, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the coupling mechanism being selectively interconnected along the support sleeve, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179, and since it has been held that the provision of adjustability, where needed, involves only routine skill in the art. *In re Stevens*, 101 USPQ 284 (CCPA 1954).

Peddinghaus teaches the idea of providing a plurality of telescoping members with a self-lubricating member, which can be either a sleeve or a strip in order to facilitate relative adjustment of the telescoping members. Therefore, it would have been obvious to modify the structure of Paradigm Stand, as modified, by providing a self-lubricating member in the form of a sleeve or a strip in order to facilitate relative adjustment of the telescoping members, as taught by Peddinghaus, since both teach

alternate conventional telescoping members structures, thereby providing structure as claimed.

Response to Arguments

8. Applicant's arguments filed 6/15/2005 have been fully considered but they are not persuasive.

9. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

10. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Peddinghaus teaches that it is well known in the art to provide telescoping members with a self-

lubricating member in the form of a sleeve or a strip in order to facilitate relative adjustment of the telescoping members.

11. In response to applicant's argument that Peddinghaus is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Peddinghaus is clearly in the field of applicant's endeavor and reasonably pertinent to the particular problem with which the applicant was concerned, since both are drawn to sliding/telescopic tube members, and it is well known in the art, due to the nature of telescopic tubes, to provide some kind of lubrication to the members.

Conclusion

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hanh V. Tran whose telephone number is (571) 272-6868. The examiner can normally be reached on Monday-Thursday, and alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

HVT HVT
March 6, 2006

LANNA MAI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600